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## WORKMEN'S COMPENSATION OR INSURANCE OF WORKMEN AND THEIR DEPENDENTS AGAINST THE LOSS OF WAGES ARISING OUT OF INDUSTRIAL ACCIDENTS<sup>1</sup>

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A widespread movement of a most remarkable kind affecting thirty-nine million workmen and their dependents<sup>2</sup> in the United States, is in progress, marking an epoch in the history of industries in this country.

Everyone has had the prevalence of accidents, with the corresponding loss of life, brought to his notice, but few realize that the most conservative estimate places the number at 536,000 and it is conceded that in reality it probably exceeds a million injured and killed yearly in the United States.<sup>3</sup>

It is actually a matter of statistical record that the net economic loss to society from the non-fatal injuries of 2,000 working-men in Alleghany County, Pa., during the year 1906-7 amounted to \$5,228,726.<sup>4</sup> On the other hand, the families of workingmen fatally injured in Cuyahoga County, Ohio, during the period 1905-10 in only 41 per cent of the cases secured compensation and in those cases they received on an average of \$1,046—this, too often, after most heart-rending delay and litigation. The dependent families must pay from this on the average of 25 per cent to attorneys, and in addition the funeral expenses and doctor's bills, leaving \$600 net compensation. The families and dependents of the remaining 59 per cent of married men killed receive no compensation whatever.<sup>5</sup>

Employers in every section of the country have realized the injustice done and for several years at their own expense have been conducting investigations, hoping to remedy the evil. Already several corporations have adopted schemes of insurance or compensation.

Germany under Bismarck twenty-seven years ago inaugurated a scheme of industrial insurance which today with few changes stands as

<sup>1</sup> This is a digest of the author's elaborate paper.—EDITOR.

<sup>2</sup> Based upon German experience: *Report of Emp. Liab. Com. of Ohio*, Part II, p. 302.

<sup>3</sup> F. C. Schwedtman, *Emp. Liab. Com. of Ohio*, Part II, p. 303.

<sup>4</sup> Crystal Eastman, *Work-accidents and the Law*, p. 317.

<sup>5</sup> *Report Emp. Liab. Com. of Ohio*, Part I, p. xxxviii.

the best system in existence. But what use are these investigations, and what remedy can be devised, while the country labors under laws made in England centuries ago and adopted by us when conditions were very different from those of today?

Almost simultaneously was the situation recognized east and west, and commissions have been appointed by governors of various states to draft new laws. The conference of the commissions of Massachusetts, Connecticut, New York, New Jersey, Ohio, Illinois, Wisconsin, Minnesota, Montana, the United States Liability Commission, the Special Committee on Uniform State Laws to prepare a Uniform Workmen's Compensation Law, and the United States Bureau of Labor, held in Chicago on November 10, 11, and 12, 1910, recommended a uniform scheme of industrial insurance.<sup>1</sup>

#### I. THE LEGAL STATUS OF THE LAW RELATING TO RECOVERY OF DAMAGES FOR INJURIES TO WORKINGMEN

In the early development of the common law, an employee could not recover any compensation whatever for injuries received in the due course of his employment. Some hundred years ago the court held that it was a part of the contract of employment between the employer and the employee that the employer should provide a reasonably safe place to work, and reasonably safe tools and appliances; should be reasonably careful in hiring agents and servants fit for the work they were to do; and should provide suitable and reasonable rules to regulate the work. If the employer failed in any of these duties he was negligent and his employee could recover damages for injuries received if the cause of the same was due to the defective tools and conditions of employment.

Thereupon followed the development of the so-called common law defenses: viz., first, the rule of contributory negligence; second, the fellow-servant rule; third, the rule of the assumption of the risk.<sup>2</sup>

The barbarity of the conduct of hazardous employments under these rules of recovery of damages for injured workmen has been statistically established.

#### LIABILITY LAWS

In response to the cry for relief, the legislatures of fifteen states have passed statutes abolishing the fellow-servant rule.<sup>3</sup>

Eight or more of the states have modified one or more of the three

<sup>1</sup> *Report Emp. Liab. Com. of Ohio*, Part I, p. 299.

<sup>2</sup> *Farwell v. The Boston & Worcester Railroad Co.*, 4, Met. 49.

<sup>3</sup> Arkansas, Colorado, Florida, Georgia (1885), Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Dakota, and Missouri.

common-law defenses, either by statute or by decision of their courts, along the following lines:<sup>\*</sup> (1) adopting the doctrine of comparative negligence which has always been the rule and common law in certain states like Georgia, and in admiralty causes in the federal courts; (2) changing the burden of proof of contributory negligence from the plaintiff to the defendant (as has always been the rule in the Federal Court and some states, for example Ohio and Oregon); (3) taking away the defense of assumption of risk when the risk assumed was caused by the fault or negligence of the employer.

The tendency of the development of the statutory law during the last few years, relative to the recovery of compensation for injuries to workmen, which arise out of their employment, is to wipe out the three common-law defenses, leaving the action based upon the fault of the employer.

## II. THE PROBLEM TO BE SOLVED

The chief source of the friction between employer and employee, the rapid increase in the demands for charitable relief and care for dependent children, and the corresponding demand for compensation for all personal injuries which workmen receive in the due course of their employment continue to exist largely because compensation for injuries can be obtained only when the employee can prove fault on the part of his employer.

### REMEDIES

The Employers' Liability Commissions of Washington, Minnesota, Wisconsin, and Ohio have reported acts to their respective legislatures recommending plans for compensation of workmen for injuries without regard to fault. It appears that the inquiry on the part of our country, as expressed by the numerous state commissions, has resolved itself into the answer to the question: What plan of compensation will you substitute for the old common-law action based upon the fault of the employer?

Legislative agents and those best informed on the subject of compensation to workmen injured in the due course of their employment agree that the most just and efficient remedy is that known as industrial insurance drawn along the lines of the German plan.

The most concrete illustration of the adaptation of the German plan of industrial insurance to the compensation of injured workmen now proposed in the United States can best be illustrated by comparison of the proposed plan of workmen's compensation as drawn up by the

<sup>\*</sup> California, Mississippi, Ohio, Oregon, South Carolina, Utah, Virginia.

Employers' Liability Commission of Ohio with the present employers' liability in Ohio. The following statistical data are taken from the report of the experts for the Ohio commission which was prepared by Emile E. Watson, investigator in chief.<sup>1</sup> The facts and proposed Ohio law are fairly typical of the conditions and proposed remedies in respect to industrial insurance as they exist today in the United States. They are of the highest scientific importance. These results are briefly summarized in the following paragraphs:

1. (a) Under the present system the Ohio workman who is killed while at his employment gets an average settlement of  $\$958 \times 36 \div 100$ , or  $\$344.88$ . (b) Under the proposed workmen's compensation plan he would receive an average settlement of  $\$2,200$ .

2. (a) Under the present system the widow and the children of the injured are paying 24 per cent of this  $\$344.88$  to lawyers and to the courts. (b) Under the proposed workmen's compensation plan they receive all the  $\$2,200$ ; not having to pay one cent of it to lawyers or anybody else.

3. (a) Under the present system only 36 per cent of those workmen who are killed while at their work receive anything at all, leaving 64 per cent receiving absolutely nothing. (b) Under the proposed workmen's compensation plan every workman killed, not by his own wilful carelessness, or in other words by suicide, receives full compensation, meaning that from 80 to 95 per cent are to receive compensation.

4. (a) Under the present system, of this 36 per cent who actually get anything at all 60 per cent get somewhere between  $\$50$  and  $\$500$ ; and 12 per cent of those injured get more than 50 per cent of the total amount that is paid out for injuries. (b) Under the proposed workmen's compensation plan not only do the 80 to 95 per cent receive on an average  $\$2,200$  each, but the difference between what each receives is determined solely by the difference in wages; for instance, where the workman receives a wage of  $\$2$  a day and is killed, his widow and children receive a compensation of  $\$2,160$ ; whereas the widow and children of the workman who receives  $\$3$  a day get  $\$3,140$ .<sup>2</sup>

5. (a) Under the present system, where the workman is killed the widow and children of the 36 per cent who get anything at all have to

<sup>1</sup> *Report of the Emp. Liab. Com. of Ohio*, Part I, p. xxxv.

<sup>2</sup> The proposed workmen's compensation plan pays a maximum of  $\$3,400$  and a minimum of  $\$1,500$  for death to those having dependents. Funeral expenses not to exceed  $\$150$  are allowed in addition to this where death occurs within one year after the accident and as a result thereof.

wait from one to five years before they get it; in which period the widow has buried her husband, the wages of the husband have stopped coming in on Saturday night, and as a consequence the mother has been forced from the home to the wash-tub or the scrub-rag, and part of the children have to be taken from school and live a life of slavery and drudgery; they have been forced to live in hovels because rent was cheaper there, and in this way tuberculosis and typhoid fever are contracted. (b) Under the proposed workmen's compensation plan there is no delay whatever—the \$2,200 (the average compensation received)<sup>1</sup> being paid at once; as a rule this amount is not to be paid in a lump sum but in the same manner as the husband received his regular weekly wage. In this way the widow is not forced to lower the standard of living for herself and her children, and she is shielded from the wash-tub and the scrub-rag and is enabled to keep her children in school until she has had them educated.

6. (a) The present system results in 56 per cent of the widows and 18 per cent of the children of the injured workmen going to work in order to earn a livelihood, because of the great mass who receive nothing, and because of the court delay and costs involved to those who actually do receive something. (b) The workmen's compensation plan results in not more than 10 per cent of the mothers and 4 per cent of the children going to work as a result of the death of the bread-winner, because from 80 to 95 per cent will receive compensation of a uniform nature—an average compensation of \$2,200 without any costs and without any delay in securing the same.<sup>1</sup>

Every employer who fails to come under this workmen's compensation plan is denied the protection of the fellow-servant contributory negligence and assumed-risk doctrines.

The employee who is working under an employer who has come under the compensation plan is required to accept the terms of settlement as prescribed by the compensation plan.

The state is made custodian of a fund which is created for the purpose of taking care of all claims which arise under the workmen's compensa-

<sup>1</sup> (a) Where the injury results in total disability the injured workman receives 60 per cent of his wage, but same not to continue for longer than 300 weeks, and to aggregate not more than \$3,400 nor less than \$1,500. (b) Where the injury results in partial disability the injured person receives 60 per cent of the impairment of his earning capacity as long as this impairment lasts, but his wage not to exceed \$12.00, not to be less than \$5.00 per week, and not to aggregate more than \$3,400 nor less than \$1,500. (c) Where the injury results in total permanent disability the injured workingman receives a life-pension based on 60 per cent of his wages; in addition to the foregoing, first medical aid and hospital expenses are allowed, not to exceed \$150.

tion plan. Into this fund the employer pays three-fourths, the employee one-fourth. It is impossible to determine at this time what amount this will require of the employee, but it will range between \$1 and \$2 per year, resulting of course in the most economical and serviceable insurance.

The argument for making both employer and employee parties to this fund is that both parties may stand in vital relation to it; that is, every employer will take it as his business to force the careless employer most carefully to protect his men, because to the extent that accidents are increased or diminished his premium is increased or diminished; likewise the employee, being a party to this fund, makes it his business to whip his fellow-workingmen into exercising care, because to the degree that the workingman is careless his premium is increased.

Briefly summarized: Under the present system the widows and the children of the injured workmen of Ohio are receiving an average of \$344.88, 24 per cent of which goes as attorney's fees and court costs. There is the delay of from one to five years in receiving the same. Only 36 per cent of these widows and children get anything whatever, and 60 per cent of this number get something between \$50 and \$500. Because of the enormous percentage receiving nothing, because of the very small amount paid to those who actually receive settlement, and because of the costs and delay to those few (about 12 per cent) who receive substantial amounts, 56 per cent of the widows and 18 per cent of the children are forced from the home and school to gain a livelihood.

Under the proposed workmen's compensation plan, on the contrary, the widow and children will receive an average of \$2,200. There will be no cost or delay in securing the \$2,200. From 80 to 95 per cent will receive compensation uniform in its nature. And because of the amount paid, and because there is no expense or delay incurred in receiving the same, not more than 10 per cent of the widows and 4 per cent of the children will be driven from the home and school to earn a livelihood.